FILED
MAY 23 19
JOHN T. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 748.

OCTOBER TERM, 1961.

LAVERNE W. SIMPSON ET AL.,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

PETITION FOR REHEARING.

D. C. NOLAN,
Iowa City, Iowa,
WILLIAM N. DUNN,
Eldora, Iowa,
WILLIAM L. MEARDON,
Iowa City, Iowa,
Attorneys for Appellant.

E. L. MIDDENDORF, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

IN THE

SUPREME COURT OF THE UNITED STATES

No. 748.

OCTOBER TERM, 1961.

LAVERNE W. SIMPSON ET AL.,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

PETITION FOR REHEARING.

The Appellant, under Rule 58, files this Petition for Rehearing on the Decision and Order of this Court, sustaining Appellees' Motion to Affirm the Judgment of the Court below, entered herein on April 30, 1962.

STATEMENT.

This case involved very substantial questions (Jur. S., pp. 9-17), among which are the questions of the *Denial of the Equal Protection of Law and Due Process.* See jurisdictional questions IV and V (Jur. S., pp. 15-17).

BASIS OF CLAIM OF DENIAL OF EQUAL PROTECTION OF LAW.

The proceedings (investigation by the Interstate Commerce Commission) in this case were instituted some eight (8) years after Appellant had acquired and had been operating under authority granted him by the Commission and almost twenty (20) years after the operating rights involved had been granted to Appellant's predecessor by the Commission.

The Statute (49 U.S.C. 204 (c) and 312 (a)) does not provide for any limitation or period in which the rights and obligations of the Applicant, and other carriers, operating thereunder must be settled if the right of the Commission to institute such proceedings at any remote time is upheld.

The Statute *"lays down no rules by which its impartial execution can be secured or partiality and oppression prevented"*. See: *Yick Wo v. Hopkins*, 118 U.S. 373. Whether the Commission defines what rights a carrier actually has granted him within a reasonable time or twenty (20) years later now depends, under the present policy of the Commission, upon the mere personal reaction or whim of the Commission.

BASIS OF CLAIM OF DENIAL OF DUE PROCESS.

The decision of the Commission in this case (see appendix C. of Jur. S.), is predicated solely upon an arbitrary conclusion of the Commission and in utter disregard of the record. In deciding the case the Commission disregarded Appellant's rights and took from him valuable rights without regard to the devastating effect it would have upon Appellant's business.

The Commission determined and found:

> "* * * We must conclude that the term 'structural steel' as used in respondent's (Appellant's) certificates has a trade and industry meaning which does not embrace the iron and steel items enumerated in our findings.";

and in support of such determination cited *Carroll Trucking Company Interpretation of Certificates*, 62 M.C.C. 348, and entirely disregarded the record in the instant case.

CONCLUSION.

Thus, it is submitted that the questions presented by this Appeal are so substantial and ones which have not been heretofore passed upon by this Court that *Rehearing* should be granted and upon *Rehearing* the Motion to Affirm denied and jurisdiction of this case noted for full presentation and argument to this Court.

Respectfully submitted,

D. C. NOLAN,
Iowa City, Iowa,
WILLIAM N. DUNN,
Eldora, Iowa,
WILLIAM L. MEARDON,
Iowa City, Iowa,
Attorneys for Appellant.

CERTIFICATE OF MERIT.

I, D. C. Nolan, one of Counsel for Appellant, do certify and state that the within *Petition for Rehearing* is filed and presented in good faith, and not for the purpose of delay because Appellant sincerely believes that a great

wrong and injustice has been done to him by the action of the Interstate Commerce Commission in this case.

D. C. NOLAN,
Iowa City, Iowa,
Attorney for Appellant.

CERTIFICATE OF SERVICE.

I hereby certify that I have today served the foregoing Petition for Rehearing of the Appellant upon each of the parties and upon the Solicitor General of the United States pursuant to the requirements of Rule 33, by depositing copies thereof in envelopes in the United States Post Office with first class postage prepaid (air mail postage for parties outside the State of Iowa) addressed to the Solicitor General and to each of the following counsel of record for such parties:

Solicitor General of the United States, Department of Justice, Washington 25, D.C.;

Donald A. Wine, Esq., United States District Attorney, Southern District of Iowa, Room 202, Federal Court Bldg., Des Moines, Iowa;

Robert W. Ginnane, Esq., General Counsel, Interstate Commerce Commission, Washington 25, D.C.;

Francis A. Silver, Esq., Associate General Counsel, Interstate Commerce Commission, Washington 25, D.C.

Dated this _____ day of May, 1962.

D. C. NOLAN,
405 Iowa State Bank Building,
Iowa City, Iowa,
Attorney for Appellant.